

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NATHANIEL WILLIAMS,

Case No. 3:19-cv-00173-RCJ-WGC

Plaintiff,

ORDER

v.

THRASHER, et al.,

Defendants.

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted a application to proceed *in forma pauperis*. (ECF No. 5). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on February 6, 2020. (ECF No. 9). The screening order imposed a stay and the Court entered subsequent orders in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 9, 13, 14). The Office of the Attorney General has filed a status report indicating that settlement has not been reached and informing the Court of its intent to proceed with this action. (ECF No. 17). As such, the Court now lifts the stay in this action.

Plaintiff has also filed a motion for appointment of counsel. (ECF No. 17). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.*

1 In the instant case, the Court does not find exceptional circumstances that warrant the
2 appointment of counsel. The Court denies the motion for appointment of counsel without
3 prejudice.

4 For the foregoing reasons, **IT IS ORDERED** that:

5 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 5) is
6 **GRANTED**. Plaintiff's previously filed motion to proceed *in forma pauperis* (ECF No. 1)
7 is **DENIED** as moot. Plaintiff shall not be required to pay an initial installment of the filing
8 fee. In the event that this action is dismissed, the full filing fee must still be paid pursuant
9 to 28 U.S.C. § 1915(b)(2).

10 2. The movant herein is permitted to maintain this action to conclusion without
11 the necessity of prepayment of any additional fees or costs or the giving of security
12 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
13 issuance and/or service of subpoenas at government expense.

14 3. Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections
15 shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
16 preceding month's deposits to Plaintiff's account (**Nathaniel Williams, #90540**), in the
17 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid
18 for this action. The Clerk of the Court shall **SEND** a copy of this order to the Finance
19 Division of the Clerk's Office. The Clerk of the Court shall also **SEND** a copy of this order
20 to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
21 P.O. Box 7011, Carson City, NV 89702.

22 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
23 a copy of Plaintiff's amended complaint (ECF No. 10) on the Office of the Attorney
24 General of the State of Nevada by adding the Attorney General of the State of Nevada to
25 the docket sheet. This does not indicate acceptance of service.

26 5. Service must be perfected within ninety (90) days from the date of this order
27 pursuant to Fed. R. Civ. P. 4(m).
28

1 6. Subject to the findings of the screening order (ECF No. 9), within twenty-
2 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
3 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
4 accepts service; (b) the names of the defendants for whom it does not accept service,
5 and (c) the names of the defendants for whom it is filing the last-known-address
6 information under seal. As to any of the named defendants for whom the Attorney
7 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
8 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
9 information. If the last known address of the defendant(s) is a post office box, the Attorney
10 General's Office shall attempt to obtain and provide the last known physical address(es).

11 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
12 shall file a motion identifying the unserved defendant(s), requesting issuance of a
13 summons, and specifying a full name and address for the defendant(s). For the
14 defendant(s) as to which the Attorney General has not provided last-known-address
15 information, Plaintiff shall provide the full name and address for the defendant(s).

16 8. If the Attorney General accepts service of process for any named
17 defendant(s), such defendant(s) shall file and serve an answer or other response to the
18 amended complaint (ECF No. 10) within sixty (60) days from the date of this order.

19 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
20 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
21 document submitted for consideration by the Court. If Plaintiff electronically files a
22 document with the Court's electronic-filing system, no certificate of service is required.
23 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
24 mails the document to the Court, Plaintiff shall include with the original document
25 submitted for filing a certificate stating the date that a true and correct copy of the
26 document was mailed to the defendants or counsel for the defendants. If counsel has
27 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
28 named in the notice of appearance, at the physical or electronic address stated therein.

1 The Court may disregard any document received by a district judge or magistrate judge
2 which has not been filed with the Clerk, and any document received by a district judge,
3 magistrate judge, or the Clerk which fails to include a certificate showing proper service
4 when required.

5 10. Plaintiff's motion for appointment of counsel (ECF No. 17) is **DENIED**.

6 11. This case is no longer stayed.

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8 DATED THIS 24th day of September 2020.

9 Walter G. Cobb
10 UNITED STATES MAGISTRATE JUDGE
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